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Know Your Rights: Free Speech and Retaliation (February 2026)

The First Amendment protects your right to free speech, though this right is more limited in prison. For example, you do not have the right to organize in prison or to read books that the prison thinks are dangerous or pornographic. Prisons can also make rules restricting the ways you can communicate with your loved ones, and who you can communicate with.

The key court case on free speech in prison is *Turner v. Safley*, 482 U.S. 78 (1987). Judges use the four-part *Turner* test to figure out whether a prison rule violates your right to free speech. To challenge a rule, you will have to answer all four questions in this test:

1. Is the rule **related to a legitimate government interest**? Safety, security, and prison order are the most common “legitimate interests.”
2. Does the rule let you **express yourself in a different way**? In other words, are there other places or ways for you to speak your mind?
3. How does the rule **impact** other prisoners, prison guards or officials, and prison resources? Judges look at the financial costs and safety risks of not having the rule.
4. Are there easy **alternatives** to the rule? Here, you can describe other ways the prison could address the problem they are trying to solve.

**The Jailhouse Lawyers Handbook has more information about free speech rights in prison. You can order it for free by contacting The Center for Constitutional Rights at 666 Broadway, 7th Floor; New York, NY 10012. Note that the handbook includes cases from outside Illinois’ federal courts, which are in the 7th Circuit (abbreviated as 7th Cir.). Those cases may be persuasive to a judge, but they only have to follow cases from the 7th Circuit.

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Retaliation

Prison officials may not retaliate against a person in custody over protected speech or other protected activities. There are three parts to a retaliation claim. For an overview, read *Hawkins v. Mitchell*, 756 F.3d 983 (7th Cir. 2014).

First, you must show that your **speech was protected** under the First Amendment. Protected speech includes written or spoken words that you have the right to make—and which do not create a safety risk. Examples:

- Filing grievances, PREA reports, or lawsuits
- Submitting ADA accommodation requests or sick call slips
- Communicating with attorneys, the courts, or elected officials
- Communicating with press or prison reform organizations (e.g. UPLC)
- Peacefully expressing your political or religious beliefs

The content of your speech may matter here. In *Pearson v. Welborn*, 471 F.3d 732 (7th Cir. 2006), a grievance was protected speech because it “related to matters of public concern.” In contrast, in *Brookins v. Kolb*, 990 F.2d 308 (7th Cir. 1993), a letter to a prison director was **not** protected because it did not “highlight a problem with the way the prison handled its disciplinary proceedings or urge a change of any prison policy.” In sum, grievances are protected if they relate to prison conditions, but not personal issues.

Second, you must show that the prison official’s retaliation against you is **likely to deter other prisoners from exercising their right to speak in the future**. For examples, read *Douglas v. Reeves*, 964 F.3d 643 (7th Cir. 2020) and *Beatty v. Henshaw*, 826 F. App’x 561 (7th Cir. 2020).

Third, you must show that your protected speech was a **motivating factor** for the prison official’s actions. In other words, they retaliated against you *because* of your speech. You will have show the *reason why* you faced mistreatment.

This part can be tricky. The hardest part is often proving that the prison official knew about your speech. The best type of evidence here is a statement directly from the prison official (for example, “drop this lawsuit or else”). See *Kidwell v. Eisenhower*, 679 F.3d 957, 965 (7th Cir. 2012). Another strategy is showing that the retaliation happened shortly after your protected activity.